

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
 UNITED ELECTRIC CO-OP, INC. AND)
 RIVERSIDE ELECTRIC COMPANY, LTD FOR)
 AN ORDER APPROVING A SERVICE)
 TERRITORY AGREEMENT PURSUANT TO)
 IDAHO CODE § 61-333(1).)**

CASE NO. GNR-E-03-8**ORDER NO. 29347**

On June 20, 2003, United Electric Co-op and Riverside Electric Company filed an Application for approval of their "Service Area Stabilization Agreement" pursuant to the Idaho Electric Supplier Stabilization Act (ESSA), codified at *Idaho Code* §§ 61-332, *et seq.* United is the successor co-op entity following the consolidation of Rural Electric Company and Unity Light & Power. Both parties are classified as electric "suppliers" under the Electric Supplier Stabilization Act (ESSA),

In Order No. 29284 the Commission issued a Notice of Modified Procedure soliciting public comment on the Parties' Agreement. The Commission Staff submitted the only comment and recommended the Commission approve the Application. After reviewing the Application, the Agreement and the Staff comments, we approve the Application as conditioned below.

THE ESSA

The purpose of the ESSA is to promote harmony among and between electric suppliers furnishing electricity within Idaho. More specifically, the ESSA: (1) prohibits the "pirating" of consumers already served by another supplier; (2) discourages duplication of electric facilities; (3) actively supervises certain conduct of electric suppliers; and (4) stabilizes the territories and consumers served by such electric suppliers. *Idaho Code* § 61-332. Under the ESSA, an "electric supplier" is any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer. *Idaho Code* § 61-332A(5).

Idaho Code § 61-333(1) provides that any electric supplier may contract with any other electric supplier for the purpose of "allocating territories, consumers, and future consumers ... and designating which territories and consumers are to be served by which contracting electric supplier." Under the ESSA, all agreements or contracts for the allocation of service territories or consumers shall be filed with the Commission. *Idaho Code* § 61-333(1). This

section further provides that the Commission may, after notice and opportunity for hearing, “approve or reject contracts between cooperatives.” The Commission “shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of” the ESSA. *Id.*, *Idaho Code* § 61-334B.

Idaho Code § 61-334B(1) also allows the Commission to grant an exception to the anti-pirating provision of the ESSA found at *Idaho Code* § 61-332B. Before granting such an exception, the Commission must find “that granting a request is consistent with the purposes of” the ESSA.

THE APPLICATION

On April 21, 2003, United and Riverside entered into their Stabilization Agreement. The Agreement establishes separate service territories for each party. Each party is responsible for serving all new customers in their defined service areas. Exhibit 1 at ¶ 2. To the extent that either party is currently providing service to consumers within the service area assigned to the other party, the existing supplier shall continue to serve these pre-existing customers. *Id.* at ¶ 3.

The Agreement also states that there may be instances where it is more efficient for a new customer located in one of the established service territories to be served by the other electric supplier. In such cases, the parties may enter

into a written agreement to permit the service of a new customer by [the] party whose distribution system is located in the service area of the other [supplier]. . . . Such agreement shall be in writing, authorized by the respective governing board of each party, and when executed shall be appended to this Agreement. The entering into such agreement is discretionary with either party and neither party shall have the right of action against the other for the exercise of such discretion.

Id. at ¶ 7.

The parties also agree that Riverside may construct an “express feeder” within United’s territory. The parties agree that construction of the express feeder “shall not be construed as to allow Riverside to hook up new customers in that area, but is limited to the construction, operation and maintenance of an express feeder. . . . The construction, maintenance and operation of any express feeder shall be subject to United specifications for clearance and other construction.” Exhibit 1 at ¶ 4.

Exhibits 2 and 3 to the Agreement contain the names of Riverside and United customers that are located in the territory of the other party or who are in close proximity to the

territory of the other party. As recited in paragraph 11, the parties will use good faith efforts to exchange the customers that are located in the defined territory of the other supplier. Absent an exchange, the parties agree that the customer may continue to be served by the existing supplier until such time as events allow for the trade of such customers. *Id.* at ¶ 11.

The Application states that the Agreement was established to settle and establish service territories between the parties, to provide stability and safety in service to consumers, and to eliminate the duplication of services. Application at ¶ 3.

STAFF COMMENTS

Staff recommended approval of the Agreement. Staff stated that it appears that the Agreement provides the least-cost service option for customers and complies with the ESSA by drawing boundaries that partially identify each supplier's service territory. The allocation of customers and territory comports with the purposes and provisions of the ESSA. Staff also noted that the Agreement provides that customers residing within the other supplier's service territory may continue to be served by their existing supplier. See Exhs. 2 and 3.

The Staff observed that paragraph 11 of the Agreement states that Exhibits 2 and 3 contain the name of customers which the two utilities agree to exchange. Staff reported that the exchange of the three customers identified in Exhibit 2 has not taken place. United told Staff that it normally obtains the consent of the customer before switching suppliers. Staff believes that customer consent should be obtained as a condition before authorizing a switch in suppliers. "With this condition, granting an exception to the anti-pirating provision of the ESSA appears reasonable when considering the purposes of the ESSA." Staff Comments at 3.

Staff also addressed one other issue contained in paragraph 6 of the Agreement. This paragraph provides that the prevailing party in any legal action arising under the Agreement be entitled to recover reasonable attorney's fees. Staff explained that prior to the amendments to the ESSA enacted in December 2000 and February 2001, *Idaho Code* § 61-334B provided that any supplier whose rights under the ESSA are in jeopardy, may bring suit in district court. *Idaho Code* § 61-334A now provides an aggrieved customer or supplier "may file a complaint with the commission" and the Commission shall resolve the matter. See *Idaho Code* §§ 61-334A(2-3); 61-334B(3). In other words, the resolution of disputes was removed from the jurisdiction of the Courts and is to be submitted to the Commission. Under the Public Utilities Law, the

Commission does not have authority to award attorney's fees other than intervenor funding pursuant to *Idaho Code* § 61-617A.

FINDINGS

Having reviewed the Parties' "Service Area Stabilization Agreement" and the Staff's supporting comments, we find it is reasonable to approve the Application and Agreement. We find the Agreement is consistent with the purposes of the ESSA. More specifically, we find that it promotes harmony among the electric suppliers, discourages duplication of facilities, and in particular, stabilizes the territories and consumers served by these two electric suppliers. There were no opposing comments.

The Parties also contemplate that there may be instances where it is more efficient for a new customer located in one service territory to be served by the other electric supplier. In such instances, the parties will execute a written agreement and append it to their Stabilization Agreement. Agreement at ¶ 7. We find this provision is appropriate and reasonable because it promotes efficiencies and harmony among suppliers. As is the case with the exchange or transfer of existing customers from one supplier to the other (discussed below), we believe it is also appropriate that the affected new customer be apprised of the proposed substitution. When the parties enter into such agreement, we believe it is appropriate for such an agreement to be submitted to the Commission for its review and approval.

Because no customer transfer or exchange has taken place per paragraph 11 and Exhibit 2, an exception from the anti-pirating provisions of the ESSA is not necessary at this time. If and when a transfer of customers between the parties is contemplated, we find that it is appropriate for the affected customers to be notified in advance of the proposed transfer. We further find that it is appropriate that the parties seek to obtain the consent of the customers who are to be transferred from one supplier to another. We believe that informing customers is an appropriate condition prior to formally considering whether an exception from the anti-pirating provision is warranted. See *Idaho Code* § 61-334B(1), (2).

Staff also made one other comment that merits discussion. The Staff observed that paragraph 6 of the Agreement provides that the prevailing party in any legal action is entitled to recover reasonable attorney fees. As Staff noted, the 2000 and 2001 amendments to the ESSA remove resolution of ESSA disputes from the district courts and authorizes the Commission to resolve these disputes. See *Idaho Code* § 61-334A. Without reforming the contract, we note that

the Commission does not have authority to award attorney fees other than as provided by *Idaho Code* § 61-617A.

ORDER


IT IS HEREBY ORDERED that the Application filed by United Electric Co-op and Riverside Electric Company to approve a "Service Area Stabilization Agreement" dated April 21, 2003 is approved as conditioned above.

IT IS FURTHER ORDERED that if the parties enter into a written agreement to substitute one supplier for the other pursuant to paragraph 7, that such an agreement shall be submitted to the Commission for its review.

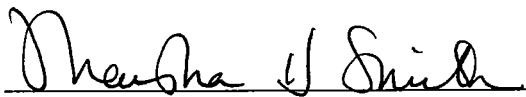
IT IS FURTHER ORDERED that before filing an application for a transfer of customers and for an exception to the anti-pirating provision of the ESSA, that the affected customers be notified of the suppliers' desire to exchange customers. The exception application shall disclose whether the affected customers consent to the transfer.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-E-03-8 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GNR-E-03-8. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §§ 61-626, 61-334B(3).

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8th
day of October 2003.



PAUL KJELLANDER, PRESIDENT

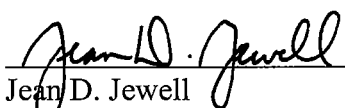


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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